

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PERNELL LAMONT FINLEY,

Petitioner,

Case No. C15-2019 RSM

V.

JAMES KEY,

## Respondent.

ORDER DENYING PETITION FOR WRIT  
OF HABEAS CORPUS

This is a federal habeas action brought under 28 U.S.C. § 2254. Petitioner Pernell Finley challenges in his Amended Petition a 2011 judgment and sentence of the King County Superior Court. In his Objection to the Report and Recommendation, Petitioner insists that the Court stated a “bold face lie” by finding that “nowhere in the transcript of closing argument [is there] an admonishment by Petitioner’s counsel that jurors should not read or consider their instructions.” Dkt. #22 at 2. The Court disagrees with Petitioner—the Report and Recommendation goes on to state that Petitioner’s counsel “did acknowledge the prosecutor’s argument that some of the charges may be easier to determine than others, and suggested that there may be ‘shortcuts’ to making those determinations” but stated that “counsel’s comments regarding shortcuts were made in the context of focusing jurors on the state’s burden of proving

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1 every element of each crime charged and suggesting that there may be easier paths to finding  
2 reasonable doubt with respect to some charges.” Dkt. #21 at 13. When counsel’s closing  
3 argument is viewed as a whole, and in light of the entirety of the record, it can be deemed neither  
4 deficient nor prejudicial. Petitioner’s other Objections fail to demonstrate factual mistake or  
5 legal error in the Report and Recommendation. To the extent that Petitioner’s Objections raise  
6 issues not previously raised in his Amended Petition, these issues are not properly before the  
7 Court.

8 The Court, having reviewed Petitioner’s Amended Petition for writ of habeas corpus,  
9 respondent’s answer to the Petition, the Report and Recommendation of James P. Donohue,  
10 Chief United States Magistrate Judge, Petitioner’s Objections, and the remaining record, hereby  
11 finds and ORDERS:

12 (1) The Court adopts the Report and Recommendation.

13 (2) Petitioner’s amended petition for writ of habeas corpus (Dkt. # 4) is DENIED.

14 (3) Petitioner’s amended petition and this action are DISMISSED with prejudice.

15 (4) In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the  
16 United States District Courts, a certificate of appealability is DENIED with respect to all grounds  
17 for relief asserted in this federal habeas action.

18 (5) The Clerk is directed to send copies of this Order to Petitioner, to counsel for  
19 Respondent, and to the Honorable James P. Donohue.

20 DATED this 15<sup>th</sup> day of September 2016.

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23 RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE

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